

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF	:	
NEW HAMPSHIRE, INC.	:	
Complainant:	:	
	:	CASE NO. S-0339
and	:	
	:	DECISION NO. 780052
MELDRIM THOMSON, GOVERNOR et al	:	
Respondent :	:	

APPEARANCES

State Employees' Association:

Richard Molan, Asst. Executive Director  
Robert Clark, Esquire, Counsel  
Howard Zibel, Esquire, Counsel

Meldrim Thomson, Jr., et al:

David Marshall, Esquire, Counsel

BACKGROUND

This is a case arising out of unfair labor practice complaints brought by the State Employees' Association of N. H., Inc. against Meldrim Thomson, Jr., Chief Executive Officer of the State of New Hampshire and the State Negotiating Committee. The complaint originally stated several unfair labor practice complaints most of which have been withdrawn due to subsequent events. The final complaint, stated in the complaint as number 19 complains against the actions of Governor Thomson.

Basically, the facts are not in dispute. The SEA, State Negotiating Committee and State Negotiator began negotiations on "cost items" on or about January 3, 1978 and attempted to reach agreement on a contract between state employees and the state through its various departments. When no agreement could be reached by the end of March, impasse was declared and the parties preceded with impasse resolution procedures set forth in RSA 273-A:12. When mediation and fact-finding failed to produce agreement, the fact-finder's final recommendations were submitted to the general court according to statute. Also, House Bill 67 was introduced to provide necessary funding for cost items in the report. The SEA at this point accepted the fact-finder's recommendations and recommended a 6 percent general wage increase. The State Negotiating Committee proposed no current wage increase but further consideration of a retroactive wage increase at the commencement of the 1979 regular session of the General Court. As indicated by paragraph 19 of the complaint, on June 29, 1978, the Governor indicated to the Legislative leadership that a 6 percent general wage increase effective October 1, 1978 would be acceptable to him rather than the wage increase provided by the provisions of House Bill 67. On July 6, 1978 the Governor reiterated that position in his veto message. The State Negotiating Committee has admitted that the proposal for a 6 percent general wage increase effective October 1, 1978 was not made to the State Employees' Association of N. H. in the course of bargaining or otherwise. The legislature took no distinct action other than action on House Bill 67 to approve or disapprove the fact-finder's report.

The complaint made by the State Employees' Association is that new proposals can only be made by one party to the other during collective bargaining and that the action by the Governor in stating acceptable alternatives in a veto message or otherwise is improper and an unfair labor practice under RSA 273-A:5, I (e) and (g). The State Negotiating Committee and the Governor denied these allegations.

An initial hearing was held by the PELRB concerning this complaint on August 30, 1978. The parties basically agreed on the facts as stated above and narrowed the issue as stated above. The parties have submitted additional materials which have been considered by the PELRB. The PELRB issued an initial decision on September 26, 1978. Following the initial decision, the SEA filed for rehearing which rehearing was held November 29, 1978. At the rehearing certain procedural matters raised in a request by the SEA that certain members of the Board disqualify themselves were considered, the members refused to recuse themselves, the Board voted that the members challenged were not disqualified from hearing the case and the parties reargued their respective positions. Based on the rehearing, the Board issues this decision to replace the decision dated September 26, 1978.

#### FINDINGS AND FACT AND RULINGS OF LAW

The Board has considered the arguments of counsel and the facts as presented at both hearings and cannot find that the action by Governor Thomson in his communication with the Legislative leadership or in his veto message provided the basis for an unfair labor practice either as a matter of fact or as a matter of law.

As a matter of fact, it appears that the juncture in the process at which the conversations and/or the veto message were made was a point in the midst of the "Legislative process" provided for in RSA 273-A:12 IV which states "if the impasse is not resolved following the action of the legislative body, negotiations shall be reopened." (Emphasis added).

On the state level, the legislative process and legislative action are lengthy and not confined to one step. First, the legislature receives the fact-finder's report and is suppose to approve or disapprove it (RSA 273-A:12 III). Then, at the state level, the legislature considers legislation to implement cost items. In this case, the legislature mingled the two processes and the Board finds that everyone involved in the procedure including the parties in this matter felt that the approval of House Bill 67 was in fact approval of the fact-finder's report and a shorthand way of implementing that report at the same time as to cost items. Finally, if the legislation is passed as was done in this case, the legislation then goes to the Governor who, exercising his constitutional prerogatives to sign or veto the bill, considers the legislation. If, as occurred in this case, the chief executive vetos the bill, he is required to return the bill to the legislature with an explanation. His explanation should provide the legislature with his reasons so that he will be understood and, presumably, should contain his best explanations so that he can perform his function and have his veto sustained if he so desires. After the legislature receives the Governor's veto message, it then reconsiders the legislation in light of his reasons for rejecting it. It then can over-ride the veto or sustain the veto. In this particular case the veto was over-ridden with the Governor's concurrence after subsequent events occurred which are not the subject of this proceeding. In any event, the Governor, when he

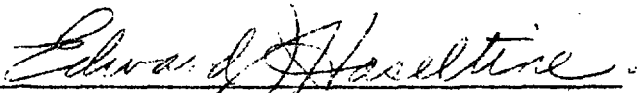
discussed the legislation with the legislative leadership and when he wrote his veto message, was exercising his constitutional function in the legislative process and providing his reasons for rejecting the bill. To say that he could not tell the legislature what he would accept in order to influence them would be to tie his hands, something this Board does not have the authority to do since his actions were taken in performance of his constitutional responsibilities. However, the discussion and messages were given in the midst of the legislative process and until action was taken on the veto, the impasse resolution by the legislative body was not complete. Therefore, under the statute quoted, negotiations were not required to be reopened at that point since legislative action to resolve the impasse was not completed. As a matter of fact, the message and statements were not intended as counter-proposals and there is no evidence that the Governor refused to present his position in negotiations at any time or even that he held these positions at any time prior to legislative action when negotiations were going on.

As a matter of law, the Governor's action was taken as Chief Executive officer and this Board cannot supersede the constitution in setting the procedures to be followed. In any event, the Board has found that the statements to the legislature were not counter-proposals, but rather explanations made by the Governor in exercising his constitutional prerogative as Chief Executive explaining to the legislature his position and then his veto and seeking to have it sustained, which is his constitutional right and responsibility. Since the discussions and veto message were not counter-proposals for negotiations, as a matter of law they were not required to be taken up at the bargaining table at the juncture when made. This is not to say that this Board and RSA 273-A do not intend that parties may resolve issues by negotiations and agreement at any and all stages of negotiations or impasse resolution, but the holding of the Board is that it is not required at the juncture alleged in this case under these circumstances.

The Employer, State Negotiating Committee, has moved to dismiss the complaint made by the SEA because they claim the matter is moot. While in fact the matter might have been moot on this occasion because the Governor subsequently urged an override of his veto and the legislature complied, it is important that this matter be addressed as a guide for future actions by Governors. The Board therefore has made its decision on the merits of the case and denies the motion to dismiss. The Board commends to all parties the negotiating process in resolving disputes and reaching agreement at any stage of negotiations or impasse resolution, as stated above, but cannot find an unfair labor practice in this case.

#### ORDER

The Board finds that as a matter of fact and as a matter of law the unfair labor practice complaint and proof presented at the hearings by the SEA fail to establish sufficient cause to find an unfair labor practice. Therefore, the request that this Board sustain an unfair labor practice complaint against Governor Thomson and the State Negotiating Committee and the State Negotiator is denied.

  
EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 3rd day of January, 1979

Members Allman, Cummings and Moriarty also present at the initial hearing. Members Cummings, Moriarty and Anderson also present at rehearing. Members Cummings, Moriarty and Anderson concur in this decision. Member Allman took no part in the decision on rehearing. Board counsel Bradford Cook also present.